



Board of Adjustment



Agenda Numbers: 14 & 15
Case Numbers: BA-60016/ZA-60086
 BA-60018/ZA-60075
Hearing Date: October 4, 2006

Appellant: Portana Apodaca
 2725 Barcelona Pl. SW
 Albuquerque, NM 87121

Agent: N/A

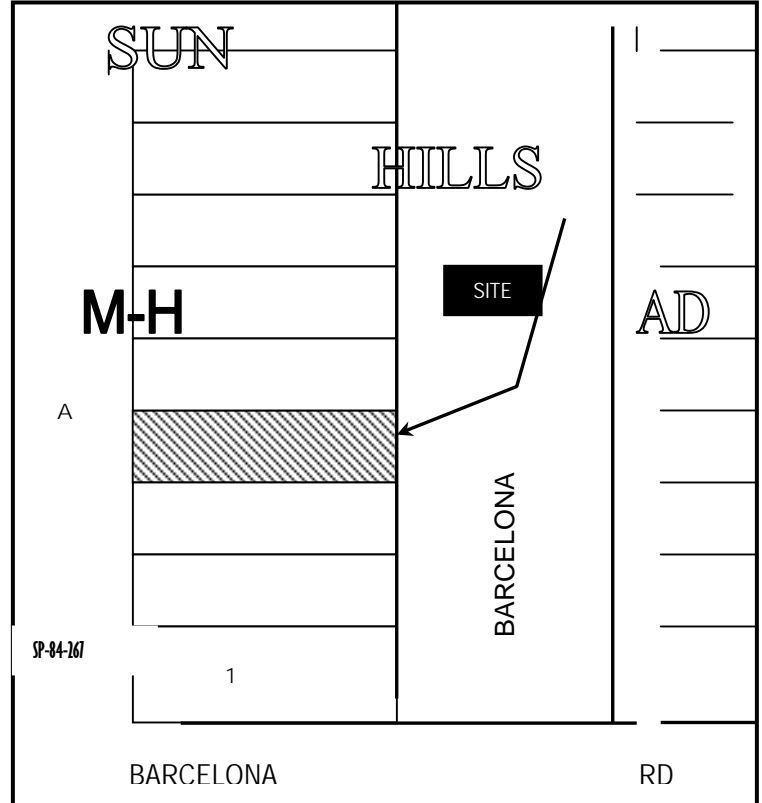
Applicant: Portana Apodaca
 2725 Barcelona Pl. SW
 Albuquerque, NM 87121

Agent: N/A

Site Location: 2725 Barcelona Pl. SW

Zone Designation: M-H Mobile Home & Single-Family Residential

Recommendations: Denial



Summary: These requests concern appeals of the Zoning Administrator's denial of conditional use approval to allow a mobile home for a medical hardship in addition to a single-family dwelling for three (3) years, as well as a variance of 8 feet to the required side yard setback distance. Contrary to the intent of the medical hardship provisions and the criteria for approval of a variance, the existing mobile home and its attached carport are located too close to the northern property line without justification for continued placement.

These requests are related to previous approval for the mobile home in connection with a medical hardship to be placed in its current location (ZA-30086) for the duration of the prior approval period.

Staff Contact: Brennon Williams, Zoning Administrator

- Attachments:**
1. Appeal applications
 2. Notices of Decision (August 14, 2006)
 3. Original applications with provided site plan
 4. Previous approval materials (ZA-30086)
 5. Agency comments for current ZA applications
 6. Site photographs, aerial photograph, zone atlas page

BA-60016/ZA-60086

Portana Apodaca appeals the Zoning Administrator's decision in denying a variance of 8 feet to the required side yard setback distance for a mobile home on Lot 4, Sun Hills Addition, located at 2725 Barcelona Pl. SW, zoned M-H, and containing approximately .553 acres. (N-10) (Original request submitted by Portana Apodaca)

BA-60018/ZA-60075

Portana Apodaca appeals the Zoning Administrator's decision in denying a conditional use to allow a mobile home for a medical hardship in addition to a single-family dwelling for three (3) years on Lot 4, Sun Hills Addition, located at 2725 Barcelona Pl. SW, zoned M-H, and containing approximately .553 acres. (N-10) (Original request submitted by Portana Apodaca)

BACKGROUND

The Requests

The appellant is requesting conditional use approval to allow the continued use of a mobile home for a medical hardship in addition to an existing single-family dwelling for three years, as well as a variance of eight feet to the required setback distance for the mobile home from a side property line. Previous approval for the use expired on July 30, 2006 (ZA-30086).

Information submitted for the conditional use application indicated that Ruth L. Barros, the property owner's aunt is in need of medical assistance. A letter from a licensed physician attesting to Ms. Barros' disabilities was included with the ZA application, and an updated letter has been provided for the appeal.

The Property

The site is located at 2725 Barcelona Pl. SW, zoned M-H, and is approximately .553 acres in area. The property is currently developed with a mobile home used as a single-family dwelling unit, the subject mobile home used in connection with the medical hardship, and an accessory structure (shed) in the rear yard of the property.

However, when the conditional use application was originally submitted, the site plan showed that the mobile home used in connection with the medical hardship to be located just 1' 4" from the detached carport. Because this did not meet the required separation distance between a mobile home and an accessory building (15 feet), the applicant opted to connect the carport and the mobile home, move the support posts on the north side of the carport to increase the distance between the structure and the adjacent property line, and make application for a variance to allow for the relocated placement of the structure.

The Hearing

The request was presented at the Zoning Administration hearing held on August 8, 2006. Portana Apodaca, owner of the subject property, presented the request. Ms. Apodaca testified that the mobile home used for the medical hardship had been placed on the site approximately 10 years ago, and the current conditional use request sought to continue the use. She indicated that she didn't understand the county's "recent" requirements concerning the location of the mobile home in the rear yard of the property, but described the work associated with the relocation and connection of the carport to the mobile home. When questioned, she acknowledged that the variance proposal did not meet the standard for approval, but added that her property has "the cleanest yard in the neighborhood".

The Decisions

The Zoning Administrator denied both of the requests due to the location of the mobile home and attached carport in the rear yard of the property. Without solid justification for the granting of a variance to the necessary setback standard, the related conditional use criteria concerning the needed size, shape, and overall effect of the area could not be met. Although separate requests, the overall intent of the regulations is to allow for orderly, safe development that does not overcrowd the land and result in a negative impact on the surrounding area. Failure to meet the variance criteria resulted in the de facto determination of denial for the conditional use request.

APPLICABLE REGULATIONS

Comprehensive Zoning Ordinance of Bernalillo County.

Section 11. M-H Mobile Home and Single-Family Residential Zone.

- A. The regulations set forth in this section or set forth elsewhere in this ordinance, when referred to in this section, are the regulations in the M-H Mobile Home and Single-Family Residential Zone. The purpose of this zone is to provide for development of subdivisions or groups of contiguous parcels of land having a minimum total area of five acres or more, with a mixture of mobile homes and single-family residences on individual lots.
- B. Use Regulations. A building or premises shall be used only for the following purposes:
 - 1. Prohibited Uses. The following uses are prohibited in this zone:
 - a. The open storage of inoperative vehicles or auto parts;
 - b. The open storage of trash or junk;
 - c. The open storage of large appliances;
 - d. Any use not designated a permissive use or conditional use in this zone, unless otherwise authorized by this Code; or
 - e. Any use not recognized as customarily incidental to a permitted use in this zone.
 - 2. Permissive Uses:
 - a. Any Permissive Use permitted in the R-1 Residential Zone.
 - b. One mobile home having a length of 40 feet or more per lot provided no other residence is located on the same lot.
 - 3. Conditional Uses. The following uses may be permitted if approved by the Zoning Administrator in accordance with the procedures and under the conditions set out in the Administrative Section of this ordinance with additional requirements deemed necessary to safeguard the best interest of the adjoining property, neighborhood and the community.
 - a. Any Conditional Use permitted in the R-1 Residential Zone.
 - b. One mobile home for a three-year period in addition to an existing single-family dwelling or mobile home on a lot, provided it complies with the following requirements:
 - (1) The mobile home may be used only by members of the immediate family for the purpose of providing assistance to those members of the family who are elderly, ill, or mentally or physically disabled as attested by a licensed physician.
 - (2) The mobile home shall be connected to water and sewage disposal facilities approved by the Department of Environmental Health.

- (3) The mobile home must be placed on the property in conformance with the setback requirements and located at least 15 feet from any structures on the same or on adjoining property.
 - (4) Placement of a mobile home on the property will not seriously conflict with the character of the area or be detrimental to the values of surrounding properties.
- C. Height Regulations. Buildings and structures shall not exceed 26 feet or 21/2 stories in height, except as provided in The Supplementary Height and Area Regulation Section of this ordinance.
- D. Area Regulations:
 - 1. Minimum Lot Area and Lot Width. Every lot shall have a minimum area of not less than three-quarters [of an] acre and a minimum lot width of 60 feet, except that where community water and sewer facilities are available, the lot area may be decreased to 8,000 square feet if located in the Developing, Established or Central Urban Areas, or 14,520 square feet if located in the Semi-Urban Area of the Albuquerque/Bernalillo County Comprehensive Plan.
 - 2. Front Yard:
 - a. There shall be a front yard having a depth of not less than 20 feet, except as provided in the Supplementary Height and Area Regulation Section of this ordinance.
 - b. Where lots have double frontage, the required front yard shall be provided on both streets.
 - 3. Side Yard:
 - a. Except as hereinafter provided in the following paragraph and in the Supplementary Height and Area Regulation Section of this ordinance, there shall be a side yard on both sides of a building the aggregate width of which shall be not less than 14 feet; provided, however, that neither such yard shall be less than six feet in width.
 - b. Wherever a lot of record, at the effective date of this ordinance, has a width of less than 60 feet, each side yard may be reduced to a width of not less than ten percent of the width of the lot, but in no instance shall it be less than three feet.
 - c. On any lot occupied by a mobile home there shall be a side yard on each side of the mobile home of 15 feet in width, and in no instance shall a mobile home be located nearer than 15 feet to an accessory building.
 - 4. Rear Yard. Except as hereinafter provided in the Supplementary Height and Area Regulation Section of this ordinance, there shall be a rear yard having a depth of not less than 15 feet.
- E. Parking Requirements. Off-street parking for all uses must be provided in accordance with the regulations set forth in the Off-street Parking, Loading and Unloading Regulations Section of this ordinance.

Section 9.B. Single-Family Residential Zone. Use Regulations.

- 3. Conditional Uses. The following uses may be permitted if approved by the Zoning Administrator in accordance with the procedures and under the conditions set out in the administrative Section of this ordinance with additional requirements deemed necessary to safeguard the best interest of the adjoining property, neighborhood and the community.
 - a. Accessory building or structure in excess of 600 square feet in area and incidental to the uses listed under Section 7.B.1. and 7.B.2.
 - b. Amateur Radio Antenna/Tower 65 to 100 feet as measured from grade.

- c. Church and incidental facilities.
- d. School.
- e. Day Care Center.
- f. Family Day Care Home.
- g. Temporary festivals, circuses, carnivals or activities in a tent, provided that the use or activity meets the following requirements:
 - (1) The minimum lot size per use or activity shall be five acres.
 - (2) All required parking shall be located on the same site with the activity or use.
 - (3) The use or activity shall be at least two miles from the nearest conforming residential use.
 - (4) Prior approval of the proposed use or activity must be obtained from the County Sheriff, County Fire Department, County Environmental Health, County Public Works, City of Albuquerque Air Pollution Control, and Albuquerque Metropolitan Arroyo Flood Control Authority or their authorized representative.
 - (5) The hours of operation, shall be between 6:00 a.m. and 8:00 p.m. This includes the time of erection and dismantling.
 - (6) The use or activity shall be limited to three days in one calendar year.
 - (7) No permanent structures shall be erected.
 - (8) Temporary fencing may be erected, and shall be removed within 24 hours after the activity.
- h. Real estate sales office and real estate signs exceeding the limitations in Subsection 8.B.(1).f. above in connection with a specific development for a period of not more than two years.
- i. Recreational facility (nonprofit) such as swimming pools or tennis clubs on sites containing not less than one acre.
- j. Temporary storage building or yard for equipment, material or activity incidental to a specific construction project but not to exceed one year, unless the time is extended by the Zoning Administrator.
- k. Mobile home used as a dwelling (with connections to any utilities) during construction of a dwelling on the same premises, provided such use shall be limited to a maximum period of 24 months.
- l. One mobile home for a three-year period in addition to an existing single-family dwelling or mobile home on a lot provided it complies with the following requirements:
 - (1) The mobile home may be used only by members of the immediate family for the purpose of providing assistance to those members of the family who are elderly, ill, mentally or physically disabled as attested by a licensed physician.
 - (2) The mobile home shall be connected to water and sewage disposal facilities approved by the Department of Environmental Health.
 - (3) The mobile home must be placed on the property in conformance with the setback requirements and located at least 15 feet from any structures on the same or on adjoining property.
 - (4) Placement of a mobile home on the property will not seriously conflict with the character of the area or be detrimental to the values of surrounding properties.
- m. Nonprofit animal facility.
- n. Park.
- o. Home occupation where the business includes visits to the site from clients, customers, patients, patrons, or similar individuals. Such home occupations may allow for employment of one non-family member and may be approved for a period of time not to exceed three years.

Agency Comments

Comments received for this request from the Bernalillo County Environmental Health Department state that this property requires proof of connection to water and sewer services for the mobile home in the rear yard, proper abandonment of the septic tank, and closure of an open well permit from 1997.

ANALYSIS SUMMARY

FOR VARIANCE REQUEST – BA-60016/ZA-60086

CRITERIA	PROVIDED INFORMATION	STAFF ANALYSIS
The property possesses peculiar, exceptional, and unusual circumstances?	- No information provided, either on the application form or during testimony at public hearing	- Property appears to be equal to other lots in the neighborhood and immediate area in its size, shape, topography, etc.
The unique circumstances of the property are not found with the locality of neighborhood concerned?	- No information provided, either on the application form or during testimony at public hearing	- Property appears to be equal to other lots in the neighborhood and immediate area in its size, shape, topography, etc. - No permit found for prior construction of carport; appears that this may have been added without approval resulting in current development difficulties
Granting of the requested variances is limited to the extent necessary to allow the owner reasonable use of the land?	- No information provided, either on the application form or during testimony at public hearing	- Size of property seems to provide sufficient area for relocation of unit and carport in order to meet necessary minimum standards - Intent of medical hardship standards are to provide for temporary living arrangements - Prior approval allowed unit to remain “as is” for at least three years

FOR CONDITIONAL USE REQUEST – BA-60018/ZA-60075

CRITERIA	PROVIDED INFORMATION	STAFF ANALYSIS
Property is adequate in size & shape?	<ul style="list-style-type: none"> - .553 acres in area - Existing development includes a mobile home used as a single-family dwelling, mobile home used in connection with a medical hardship, and an accessory building 	<ul style="list-style-type: none"> - Mobile home (including attached carport) is too close to the side (northern) property line - Variance to allow continued placement (ZA-60086) denied; pending appeal (BA-60016) - Property appears to possess sufficient area to allow for relocation of unit without need to vary the required standard
Property can be developed to avoid traffic congestion/hazards?	<ul style="list-style-type: none"> - Existing access from Barcelona Place - Both units are accessed from this right-of-way; no adverse comments received from Public Works Division 	<ul style="list-style-type: none"> - Request meets minimum standards
Use will not be detrimental to surrounding properties?	<ul style="list-style-type: none"> - Documented need for medical assistance provided by licensed physician - Care-taker will continue to reside on site to assist with medical hardship 	<ul style="list-style-type: none"> - Mobile home in rear yard is too close to adjacent property line & connected to an unpermitted carport - These continued violations are contrary to the intent of the Zoning Ordinance and result in an adverse affect on the value of nearby properties

ANALYSIS & CONCLUSION

The central issue for both of these appeals is the existing location of the mobile home in the rear yard of the property next to the adjacent lot line. Without any peculiar, exceptional and unusual characteristics of the lot requiring a variance, as well as some sort of evidence that a variance would be limited to the extent necessary to allow the owner reasonable use of the land [ref. Section 24.A.2.h.(1)], the applicant falls short of crossing the essential threshold for consideration of the associated conditional use request. And when compared to the

requirements for conditional use approval as outlined in Section 24.A.2.i., it becomes apparent that a noted setback violation renders the property unable for being perceived as adequate in area or consistent with the standards governing other residential development in the vicinity. The existing standards outlined in the Zoning Ordinance – in this case, the mandatory 15-foot setback related with the use of the mobile home – are the minimum requirements that need to be met in order for safe, harmonious, and acceptable development to take place.

Because of the establishment of these *minimum* standards, changes, modifications, and/or variances to zoning regulations are very difficult to obtain. Essentially, in order for a variance to be authorized, an applicant must prove that no other solution or option is available to them, other than a discretionary waiver to the regulation. That criterion is further complicated with the need for proof that the property owner suffers some sort of disadvantage without the variance that other property owners in the same zone and same neighborhood are not limited with. Finally, an applicant needs to show that the granting of the variance is not for more than is truly needed, but rather limited to the amount necessary in order to “level the playing field” to be approximately equal to surrounding property owners.

Perhaps the greatest obstacle in consideration of the requests is the uninterrupted and continued use of the site. The applicant has acknowledged that the second mobile home has been on the site for approximately ten years, and used in association with an intended temporary activity (medical hardship). Additionally, the improper location of the carport was noted by the county over 3½ years ago, and previous discussions about its correct placement and related actions were addressed. These factors seem to contradict any arguments related to reasonable use as necessitated for a variance, or statements of confusion and surprise regarding the county’s request to have development on the site meet all applicable standards.

As the Zoning Ordinance charges the Board of Adjustment with the duty to hear and determine appeals from the decisions of the Zoning Administrator, new information may be revealed during the appeal process which results in these matters being authorized by the Board. However, based on the testimony and evidence submitted at this time, staff cannot recommend approval of these matters when measured against compared to the standards outlined in the ordinance.

RECOMMENDATIONS:

Denial of BA-60016/ZA-60086, thereby upholding the previous decision of the Zoning Administrator; and

Denial of BA-60018/ZA-60075, thereby upholding the previous decision of the Zoning Administrator.

Brennon Williams
Zoning Administrator